

Application No. 09/346,470
Amendment dated January 16, 2007
Response to Office Action of September 15, 2006

REMARKS

Claims 79-81, 85 and 88-98 are in this application. Claims 79-81, 85 and 95 have been amended to better claim the invention. The recitation of substantially identical has been replaced with "at least 95% identical to". This amendment is supported by the specification (substitute) at page 23, lines 19-22. Claims 82-84 have been canceled without prejudice and are replaced by new, independent claims 96-98, as requested by the Examiner. None of the amendments made herein constitutes the addition of new matter.

The Rejections under 35 U.S.C. 112, second first paragraph

Claims 79-81, 85 and 88-95 remain rejected as allegedly indefinite. Applicants respectfully traverse this rejection.

The Patent Office has stated that the Specification provides adequate support for sequences that are 95% identical to the exemplary sequences. In the interest of advancing prosecution and without acquiescing to the rejection, the recitation of substantially identical has been replaced with "at least 95% identical to". This amendment is supported by the definition of substantially identical in the Substitute Specification at page 23.

In view of the amendment to the claims and the statements of the Examiner, withdrawal of the rejection is respectfully requested.

The Rejections under 35 U.S.C. 112, first paragraph

Claims 79-81, 85 and 88-95 have been rejected under 35 U.S.C. 112, first paragraph, as allegedly not enabled.

The Patent Office has conceded that the Specification provides adequate support for sequences that are 95% identical to the exemplary sequences.

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In the interest of advancing prosecution and without acquiescing to the rejection, Applicants have limited the claims to the recitation of "at least 95% identical to ". It is believed that the amended claims are now in condition for allowance.

Claims 79-81, 85 and 88-95 have been rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicants respectfully traverse this rejection.

The Patent Office has not been persuaded by Applicants' arguments related to what the art would understand from the present Specification.

As noted above, the Patent Office has stated that the Specification provides adequate support for sequences with at least 95% sequence identity to the specified sequences. In the interest of advancing prosecution and without acquiescing to the rejection, the claims have been limited to recite sequences with at least 95% identity to a specified sequence. Applicants respectfully maintain that the present application meets the requirements for written description, i.e., that claims are adequately enabled when the Specification is taken together with the knowledge of the art.

Claims 93-94 were rejected under 35 U.S.C. 112, first paragraph, as allegedly not enabled. Applicants respectfully traverse this rejection.

The Specification is acknowledged to enable an isolate or cultured host cell comprising an expression vector, but not to reasonably provide enablement for a host cell comprising an expression vector. It appears that the rejection relates to host cells which are embodied within transgenic animals.

Although Applicants do not acquiesce to this rejection, claims 92-94 have been amended to recite "isolated" host cells in order to advance prosecution in this application.

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Applicants reserve the right to prosecute claims to host cells in the broader sense in a future application.

In view of the amendments to the claims and the foregoing discussion, Applicants respectfully request the withdrawal of the rejections under 35 U.S.C. 112, first paragraph.

The Objections to Certain Claims

The Patent Office has objected to claims 82-84 as dependent on a rejection base claims and has stated that these claims would be allowable if rewritten in independent form.

Accordingly, claims 82-84 have been canceled without prejudice, and new claims 96-98, which incorporate all the limitations of claims 82-84 and the claims from which they depend, have been presented.

Conclusion

In view of the foregoing, it is submitted that this case is in condition for allowance, and passage to issuance is respectfully requested.

If there are any outstanding issues related to patentability, the courtesy of a telephone interview is requested, and the Examiner is invited to call to arrange a mutually convenient time.

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This amendment is accompanied by a Notice of Appeal with Petition for Extension of Time (one month) and payment of \$620.00 (charged to Deposit Account No. 07-1969) pursuant to 37 C.F.R. 1.17 and 1.20. It is believed that this amendment does not necessitate the payment of any additional fees under 37 C.F.R. 1.16-1.17. If the amount submitted is incorrect, the Patent Office is authorized to charge the necessary fees due, including for any further extension of time needed, to Deposit Account No. 07-1969.

Respectfully submitted,

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Donna M. Ferber
Reg. No. 33,878

GREENLEE, WINNER AND SULLIVAN, P.C.
4875 East Pearl Circle, Suite 200
Boulder, CO 80301
Telephone (303) 499-8080
Facsimile: (303) 499-8089
Email: winner@greenwin.com
Attorney docket No. 53-99